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18 Consultants Limited

19 UNITED STATES DISTRICT COURT  
20 CENTRAL DISTRICT OF CALIFORNIA

21 IN RE APPLICATION OF )  
22 PATRICK MCKILLEN AND )  
23 HUME STREET )  
24 MANAGEMENT )  
25 CONSULTANTS LIMITED )

26 Petitioners

27 CASE NO.: 2:24-mc-62

28 **DECLARATION OF DAVID  
APELBAUM IN SUPPORT OF *EX*  
*PARTE* APPLICATION FOR AN  
ORDER PURSUANT TO 28 U.S.C.  
§ 1782 TO CONDUCT  
DISCOVERY FOR USE IN A  
FOREIGN PROCEEDING FROM  
SHEIKH HAMAD BIN JASSIM**

1 I, David Apelbaum, declare and state as follows:

2 1. My name is David Apelbaum. I am a citizen of France, and I currently  
3 reside in Paris, France. I am over the age of twenty-one years old, I have never been  
4 convicted of a crime involving moral turpitude, and I am competent to make the  
5 statements contained herein.

6 2. I am a lawyer in France. I was admitted to practice law in France on  
7 31 October 2012. I am a partner at Apelbaum Bendavid Poincloux Associés  
8 (“ABPA”), the law firm I founded in January 2020, and I have practiced in France  
9 for over a decade. My practice covers several areas of criminal defense with a focus  
10 on white-collar crime, including disputes related to corruption, tax evasion,  
11 embezzlement, fraud, and money laundering. I graduated from Sciences Po Law  
12 School in 2010 and from Paris-II University Law School in 2011. I currently teach  
13 criminal procedure at the Sciences Po Law School. I regularly publish articles on  
14 topics related to white-collar crime, criminal procedure, and media law. In 2015, I  
15 was elected Secretary of the Paris Bar Conference, in which role I served a one-year  
16 term and was part of the division for criminal defense of low income individuals  
17 accused of serious crimes. In 2022, I was recognized among thirteen “Next  
18 Generation Partners” by the 2022 edition of the Legal 500.

19 3. I represent Hume Street Management Consultants Limited (“HSMC”) in  
20 pre-trial discovery proceedings in front of the Paris Commercial Court and related  
21 appellate proceedings (the “French Discovery Proceedings”). I will also represent  
22 HSMC in the future proceeding on the merits before the Paris Commercial Court  
23 against Constellation Paris SAS (“Constellation Paris”), a French company whose  
24 beneficial owner is Sheikh Hamad bin Jassim bin Jaber bin Mohammed bin Thani  
25 Al Thani (“Sheikh Hamad bin Jassim”) (the “French Merits Proceeding” and  
26 together with the French Discovery Proceedings, the “French Proceedings”). In this  
27 capacity, I have personal knowledge regarding the facts contained in this affidavit.  
28

4. I attach hereto true and correct copies of the following documents that I refer to in this declaration: the April 29, 2021 email from Fady Bakhos to Patrick McKillen as **Exhibit 1**; the March 24, 2021 email from Fady Bakhos to Vinci Immobilier and Gleeds Project & Construction Management Services (“Gleeds”) as **Exhibit 2**; the September 16, 2021 letter from Patrick McKillen to Fady Bakhos as **Exhibit 3**; the September 26, 2021 email from Fady Bakhos to Liam Cunningham as **Exhibit 4**; the September 23, 2021 email from Gleeds to Patrick McKillen as **Exhibit 5**; and the June 9, 2020 email from Fady Bakhos to Annemarie Ryan at the request of Sheikh Hamad bin Jassim as **Exhibit 6**.

5. I am submitting this Declaration in support of Petitioners’ *Ex Parte* Application Pursuant to 28 U.S.C. § 1782 for an Order to take discovery upon Sheikh Hamad bin Jassim for use in a foreign proceeding. What follows is a description of the facts, as alleged in the French Proceedings.

#### **I. BACKGROUND OF THE FRENCH PROCEEDINGS**

6. Petitioner Patrick McKillen (“McKillen”) is a citizen of Ireland and the United Kingdom who resides in Europe. He is the owner and director of HSMC—the future plaintiff in the French Merits Proceeding and party to the existing pre-discovery proceedings.

7. Petitioner HSMC is an Irish Corporation with its principal place of business in Dublin, Ireland. HSMC will be the plaintiff in the French Merits Proceeding.

8. Constellation Paris, the anticipated defendant in the French Merits Proceeding, is a French company created for the purpose of the construction of a luxury hotel at 231, Boulevard Saint-Germain in Paris, France, whose ultimate beneficiary is Sheikh Hamad bin Jassim. Constellation Paris is chaired by Fady Bakhos (“Bakhos”).

1           9.     Respondent Sheikh Hamad bin Jassim is the former Minister for  
2 Foreign Affairs in Qatar, a position he held for two decades before becoming Prime  
3 Minister from 2007 to 2013. Sheikh Hamad bin Jassim is the beneficial owner of  
4 Constellation Paris and, equally along with another member of the Qatari royal  
5 family, the beneficial owner of Maybourne Hotels Limited, a service company of  
6 Maybourne Hotel Group.

7           10.    In 2004, a group of investors including McKillen acquired three luxury  
8 hotels in London—The Connaught, The Berkeley, and Claridge’s—and began to  
9 operate them as the Maybourne Hotel Group. Upon information and belief, Coroin  
10 Limited (“Coroin”) became the parent company of subsidiaries holding each hotel,  
11 and Maybourne Hotels Limited was formed to provide support services to member  
12 hotels. In 2015, McKillen agreed to sell his share in Coroin to Séléné SaRL, a  
13 company owned by Respondent Sheikh Hamad bin Jassim. Following the  
14 acquisition, McKillen and HSMC continued to manage and renovate a number of  
15 Maybourne hotels.

16           11.    Sheikh Hamad bin Jassim and his business partner, Sheikh Hamad bin  
17 Khalifa bin Hamad bin Abdullah bin Jassim bin Mohammed Al Thani (“Sheikh  
18 Hamad bin Khalifa”) sought to expand the Maybourne Hotel Group internationally  
19 by acquiring, through various companies, two hotels, one in Los Angeles and the  
20 other in Roquebrune-Cap-Martin on the Côte d’Azur. They solicited HSMC, who  
21 agreed to provide management and redevelopment services with respect to the Côte  
22 d’Azur hotel (the “Maybourne Riviera Project”) in 2018 and the Los Angeles hotel  
23 (the “Maybourne Beverly Hills Project”) in 2019. Around the same time, Sheikh  
24 Hamad bin Jassim also sought to build a third hotel in Paris and identified an  
25 opportunity when the French government put the eastern portion of the historical  
26 seat of the French Ministry of Armed Forces, located at 231, Boulevard Saint-  
27 Germain in Paris, France (the “Saint-Germain”), up for sale. Development of the  
28 Saint-Germain into a luxury hotel would be the most challenging and ambitious

1 project of the three international projects, given that it did not involve redevelopment  
2 of an existing hotel, but the construction of a new hotel.

3 12. Given HSMC's experience with other successful Maybourne hotel  
4 management and renovation projects, in September 2018, Sheikh Hamad bin Jassim  
5 met with McKillen in London to discuss the Sheikh's interest in acquiring the Saint-  
6 Germain and transforming it into a luxury hotel (the "Saint-Germain Project").  
7 Sheikh Hamad bin Jassim requested McKillen's expert opinion on whether it was a  
8 prudent investment. Shortly thereafter, McKillen visited the Saint-Germain site and  
9 advised Sheikh Hamad bin Jassim that, indeed, the Saint-Germain presented a good  
10 investment opportunity.

11 13. Taking McKillen's advice, Sheikh Hamad bin Jassim purchased the  
12 Saint-Germain in 2019 through his company created specifically for the transaction,  
13 Constellation Paris. Constellation Paris is chaired by Bakhos, a longtime advisor to  
14 the Qatari royal family and, particularly, Sheikh Hamad bin Jassim.

15 14. Simultaneously, Sheikh Hamad bin Jassim approached McKillen  
16 asking whether HSMC would serve as project manager on the Saint-Germain  
17 Project. McKillen agreed. Pursuant to this agreement with Sheikh Hamad bin  
18 Jassim and in keeping with HSMC's work on other projects for Sheikh Hamad bin  
19 Jassim and Sheikh Hamad bin Khalifa, McKillen and HSMC were engaged to  
20 oversee all aspects of the development of a new hotel on the Saint-Germain site.  
21 Gleeds was also retained as the primary contractor on the project, and Vinci  
22 Immobilier served as the real estate developer.

23 15. The Saint-Germain Project consisted of the complete creation of an  
24 ultra-luxury hotel, including almost 100 rooms, two swimming pools, a wellness  
25 center, anti-aging clinic, luxury boutiques, lounges, and restaurant and bar. HSMC  
26 developed plans for the creation of the new hotel, provided input and guidance at  
27 each stage of development, and supervised the project on-site. Specifically,  
28 immediately following HSMC's engagement and through September 2021, HSMC

1 reviewed and selected contractors for the project (including, though not limited to,  
2 architectural firms, real estate developers, and the primary contractor), reviewed and  
3 provided feedback on the design and structure of the hotel, provided feedback on the  
4 project's business plan and other financial aspects of the project, obtained  
5 administrative authorizations for the project, and played an instrumental role in  
6 presenting the project to the public on September 14, 2021. Nor were HSMC's  
7 opinions sought merely for the sake of receiving another opinion; rather, HSMC  
8 clearly had decision-making authority. Sheikh Hamad bin Jassim indicated as much  
9 during the project, saying, for example, that with respect to the involvement of an  
10 additional interior designer, "the ultimate decision lies with you [McKillen] on this  
11 matter." Ex. 1 at 13.

12 16. It is also clear that Sheikh Hamad bin Jassim considered HSMC and  
13 McKillen to be essential to the Saint-Germain Project. In an email to Gleeds and  
14 Vinci Immobilier dated March 24, 2021, Bakhos relays "instructions from the owner  
15 [Sheikh Hamad bin Jassim]" for Gleeds and Vinci Immobilier to develop the hotel  
16 "under Mr. McKillen's guidance and directives" and noting that the housing scheme  
17 is to be developed "in accordance with the layout to be determined by Mr McKillen."  
18 Ex. 2 at 19. What is more, throughout the duration of HSMC's involvement with  
19 the project, Sheikh Hamad bin Jassim and Constellation Paris postponed meetings if  
20 McKillen was not available and took care to ensure his availability ahead of other  
21 stakeholders, given his critical role on the project.

22 17. Thus, on September 16, 2021—two days following McKillen's  
23 participation in the presentation of the Saint-Germain Project to the public—HSMC  
24 sent Bakhos a letter containing a draft remuneration agreement for the Saint-  
25 Germain Project. Ex. 3. Indeed, HSMC had thus far worked on the project without  
26 a formal contract, as it was customary in the relation between McKillen and Sheikh  
27 Hamad bin Jassim—for example, in the earlier, more advanced Maybourne Riviera  
28 Project, HSMC had worked without contract before signing a partly retroactive

1 contract. HSMC's offer within the draft agreement was generous in two key  
2 respects. First, HSMC proposed the same level of remuneration as that explicitly  
3 agreed in exchange for HSMC's work on the Maybourne Riviera Project: two  
4 million euros per quarter. Given that the Maybourne Riviera Project required only  
5 two-thirds of the magnitude of work required for the Saint-Germain Project,  
6 HSMC's offer reflected a commercial discount to Constellation Paris of 33%.  
7 Second, though HSMC began its services on the Saint-Germain Project in September  
8 2018, HSMC's draft agreement proposed that remuneration begin only from January  
9 2021. Such an offer extended savings of more than ten million euros to Constellation  
10 Paris.

11 18. Even so, and despite HSMC's significant investment in the  
12 management of the project for a period of three years, on September 26, 2021,  
13 Bakhos sent an email to Liam Cunningham, McKillen's associate, refusing to  
14 compensate HSMC for project management work performed, boldly stating that  
15 "there is no project management work [in relation to the Saint-Germain Project]  
16 other than what is being undertaken by Gleeds." Ex. 4 at 26. This response was  
17 especially disingenuous in light of an email from Gleeds to McKillen sent three days  
18 earlier in which Gleeds highlighted "a number of important points in relation to  
19 Planning Application and Detailed design development [that] need[] your [HSMC's]  
20 participation[.]" Ex. 5 at 30. Given the absolute bad faith behavior of Constellation  
21 Paris, refusing to pay HSMC for its role as project manager and suggesting that no  
22 sum whatsoever was owed to HSMC, no further discussion could take place.

23 19. To this day, Constellation Paris has not compensated HSMC for  
24 services performed on the Saint-Germain Project, which is valued at tens of millions  
25 of euros. And, to date, HSMC has received no criticism with respect to the quality  
26 of its work on the project.

27 20. Rather, despite HSMC's significant investment in the Saint-Germain  
28 Project, payment for the work was withheld for reasons completely unrelated to the



1 quality of Petitioners' work on the Saint-Germain Project—and likely at the  
 2 instruction of members of the Qatari royal family, namely Sheikh Hamad bin Jassim.  
 3 In fact, *multiple* companies affiliated with Sheikh Hamad bin Jassim and Sheikh  
 4 Hamad bin Khalifa have refused to pay HSMC compensation for project  
 5 management services rendered with respect to the Maybourne Beverly Hills Project,  
 6 the Maybourne Riviera Project, and *the Saint-Germain Project*.

7 21. What is more, there are several indications that Sheikh Hamad bin  
 8 Jassim is personally involved in the facts that will be in dispute in the French Merits  
 9 Proceeding, as de facto manager of Constellation Paris and accomplice in the  
 10 contract breach by Constellation Paris. As an initial matter, Sheikh Hamad bin  
 11 Jassim was personally involved in the Saint-Germain Project. He participated in  
 12 meetings on, at minimum, September 18, 2018, November 26, 2018, March 28,  
 13 2019, March 18, 2021, and May 26, 2021. Sheikh Hamad bin Jassim would also  
 14 issue express instructions concerning the development of the site on a regular basis,  
 15 as exemplified by exchanges on June 9, 2020, March 24, 2021, and April 29, 2021.  
 16 Exs. 6 at 33, 2 at 19, 1 at 13.

17 22. Furthermore, the systematic involvement of Bakhos, a personal advisor  
 18 to Sheikh Hamad bin Jassim, in the Saint-Germain Project and his refusal to  
 19 compensate HSMC for project management services rendered further evidences  
 20 Sheikh Hamad bin Jassim's personal involvement in the disputed facts. Bakhos'  
 21 close association with Sheikh Hamad bin Jassim is evident. For example, Bakhos'  
 22 email address domain, @almirqab.com, corresponds to the Qatari company Al  
 23 Mirqab, of which Sheikh Hamad bin Jassim is the sole economic beneficiary.

24 23. In anticipation of the French Merits Proceeding, HSMC has been  
 25 engaged in pre-litigation discovery proceedings in front of the Paris Commercial  
 26 Court. Specifically, in June 2023, HSMC sought pre-litigation discovery from  
 27 Constellation Paris, Vinci Immobilier Promotion, and Sheikh Hamad bin Jassim via  
 28 request under Article 145, an *ex parte* mechanism in French civil procedure by which



litigants can apply to the court to order investigative measures to preserve, before any trial, proof of facts upon which the resolution of a dispute may depend. HSMC has been unsuccessful in obtaining the ordering of pre-trial discovery measures at Sheikh Hamad bin Jassim's Paris office via this mechanism, given the high bar to pre-trial discovery under French law and the need to provide specific allegations regarding the location of potentially discoverable materials. Instead, the Court has authorized discovery against Constellation Paris and Vinci Immobilier Promotion to complete the record; while Vinci Immobilier Promotion complied with the order, Constellation Paris has thus far flatly refused to comply, as reported by the court-appointed bailiff.

## **II. RESPONDENT AND THE DISCOVERY SOUGHT**

24. Respondent Sheikh Hamad bin Jassim is not a party to the French Discovery Proceedings. What is more, I anticipate that it will be very difficult to successfully add Sheikh Hamad bin Jassim as a party to the French Merits Proceeding without additional discovery.

25. Respondent Sheikh Hamad bin Jassim was closely involved in the events underlying the French Merits Proceeding—that is, the hiring of HSMC as project manager, the instructions given to HSMC for its services, and the decision not to pay HSMC for these project management services—and, as a result, almost certainly has critical information to support HSMC's claims.

26. Respondent Sheikh Hamad bin Jassim is a citizen of Qatar. Sheikh Hamad bin Jassim engaged HSMC as project manager on the Saint-Germain Project and formed Constellation Paris for the purposes of the project, instructed other contractors to develop the Saint-Germain under HSMC's guidance, and attended meetings and issued instructions concerning the Saint-Germain Project. Further, Bakhos, who is Sheikh Hamad bin Jassim's personal advisor, refused payment to HSMC for project management services rendered on the Saint-Germain Project at

1 approximately the same time as other companies owned by Sheikh Hamad bin  
2 Khalifa, business partner of Sheikh Hamad bin Jassim, refused HSMC payment for  
3 services rendered on other hotel projects. Accordingly, Respondent Sheikh Hamad  
4 bin Jassim has documents and information crucial to supporting HSMC's claims.

5 27. Petitioners plan to use this information to demonstrate (1) Sheikh  
6 Hamad bin Jassim's personal involvement in the commercial relationship with  
7 HSMC in connection with the Saint-Germain Project; (2) proof of bad faith of  
8 Constellation Paris and Sheikh Hamad bin Jassim (that, in refusing payment to  
9 HSMC, Constellation Paris was motivated by a bad faith order from Sheikh Hamad  
10 bin Jassim rather than an honest assessment of the value of HSMC's work on the  
11 project), which under French law enables plaintiffs to receive increased damages;  
12 and (3) that an agreement for remuneration was reached between HSMC and  
13 Constellation Paris at the outset and during the project, and that Constellation Paris  
14 and Sheikh Hamad bin Jassim were, in this regard, satisfied with HSMC's work,  
15 requiring the payment of sums equal to or greater than those proposed in Exhibit 3.

16 28. For these reasons, Petitioners seek discovery and intend to use the  
17 documents and information obtained from such discovery in the French Merits  
18 Proceeding in front of the Paris Commercial Court, or before any jurisdiction seized  
19 of the matter.

20 29. More specifically, as counsel for HSMC in the French Merits  
21 Proceeding, I plan to use the documents and testimony obtained from these parties  
22 to establish Sheikh Hamad bin Jassim's personal liability for sums owed to HSMC;  
23 establish bad faith on the part of Constellation Paris and HSMC in denying HSMC  
24 remuneration; and establish the existence of an agreement between HSMC and  
25 Constellation Paris at the outset and during the project providing for remuneration  
26 equal to or greater than that proposed by McKillen in his September 16, 2021 letter.

1 **III. SUITABILITY FOR PERMITTING DISCOVERY PURSUANT TO**  
2 **SECTION 1782**

3 30. Permitting this discovery pursuant to § 1782 is appropriate in this case  
4 as Petitioner's application meets the threshold requirements of § 1782. Petitioners  
5 are "interested persons" in the French Merits Proceeding, as HSMC will bring the  
6 action, McKillen is the owner and director of HSMC, and I plan to use the discovery  
7 sought pursuant to § 1782 in the French Merits Proceeding.

8 31. Permitting this discovery pursuant to § 1782 is also appropriate  
9 because the relevant discretionary factors weigh in favor of permitting discovery.

10 32. As established, Respondent is not a party to the French Proceedings,  
11 and, without additional discovery and the aid of this Court, I anticipate that it will  
12 be very difficult, if not impossible, to successfully add him as a party to the French  
13 Merits Proceeding.

14 33. The documents and testimony sought are unavailable in the French  
15 Proceedings. First, French Civil Procedure dictates that litigants must seek  
16 discovery measures from a specific location (not from a specific individual) and to  
17 do so, they must provide specific allegations that documents are located in a given  
18 location. It is not possible for a litigant to require investigative discovery measures  
19 from a person, wherever this person may be; a specific place (workplace, personal  
20 home, etc.) must be targeted, with enough indication that requested documents may  
21 indeed be found at this place. Second, while French Civil Procedure allows litigants  
22 to ask for production of evidence from a third party in the course of litigation, the  
23 requesting party must specify exactly the document sought and demonstrate its  
24 existence, and cannot request the production of any document related to a specific  
25 subject. Third, within this context, French Civil Procedure does not offer the ability  
26 to take a deposition. Thus far, Petitioners have been unable to provide sufficient  
27 allegations to justify specific searches of Sheikh Hamad bin Jassim's Paris office or  
28 residence. Furthermore, we do not currently know where Sheikh Hamad bin Jassim

1 keeps the relevant information in his possession, and we have concerns it could be  
2 moved to evade the scope of French discovery and/or that parts of the relevant facts  
3 are simply known to Sheikh Hamad bin Jassim and not documented. The Paris  
4 Commercial Court is thus impeded in its ability to compel additional discovery from  
5 Sheikh Hamad bin Jassim, or otherwise obtain the information sought in Petitioners’  
6 § 1782 application, without the aid of a United States court.

7       34. Based on my years of practice in France, I believe the Paris Commercial  
8 Court—or any jurisdiction seized of the matter—will consider the information  
9 sought via § 1782 discovery. I know of no reason French courts would be  
10 unreceptive to discovery pursuant to § 1782, and believe that the Paris Commercial  
11 Court would accept evidence obtained through the discovery sought by Petitioners.  
12 I also consider such information to be crucial to the resolution of the French Merits  
13 Proceeding.

14       35. While Petitioners are seeking discovery that is currently unavailable  
15 under French procedure, there is nothing to suggest, and I have no reason to believe,  
16 that Petitioners are attempting to circumvent foreign proof-gathering restrictions.  
17 There is no applicable foreign proof-gathering restriction at issue that would bar  
18 obtaining this information through other lawful means. The French Code of Civil  
19 Procedure does not prohibit discovery in the United States in support of French civil  
20 proceedings, and indeed such discovery is utilized by French courts.

21       36. Given that Petitioners are uncertain of the physical location of the  
22 discovery they require, and believe that parts of the relevant information could be  
23 simply known by Sheikh Hamad bin Jassim, Petitioners’ application here is solely  
24 trying to obtain discovery crucial to the resolution to the French Merits Proceeding  
25 for which there is no currently viable mechanism under French procedure given the  
26 information available to us.

27       37. The discovery sought is not unduly burdensome or intrusive, as  
28 Petitioners only seek information and documents that are narrowly tailored to obtain

1 information related only to what I anticipate will be the critical points at issue in the  
2 French Merits Proceeding.

3 38. Pursuant to 28 U.S.C § 1746, I declare under the penalty of perjury  
4 under the laws of the United States of America that the foregoing is true and correct.

5  
6 DATED: May 6, 2024



7  
8 \_\_\_\_\_  
David Apelbaum